

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

against

ORDER ADOPTING REPORT  
AND RECOMMENDATION  
02-CV-5216(JS)(WDW)

GIACOMO ARENA, also known as JACK  
ARENA, MARGARET ARENA, also known  
as MARGGIE ARENA, also known  
as MARGGIE M. ARENA, also known  
as MARGIE ARENA, COMMISSIONER OF  
SOCIAL SERVICES OF SUFFOLK COUNTY,  
DIRECTOR OF CHILD SUPPORT ENFORCEMENT  
BUREAU, FRANK O'CONNOR, CC EMERALD  
EQUITIES, LTD., COMMISSIONER OF  
TAXATION & FINANCE, LEONARD J.  
VIGLIATORE, PEOPLE OF THE STATE OF  
NEW YORK, JOHN DOE 1 THROUGH 2,  
inclusive, such name being fictitious  
and unknown to plaintiff, the persons  
or parties intended being tenants,  
occupants, persons, corporations, or  
other legal entities, if any, having  
or claiming an interest in or lien  
upon the premises described in the  
cmp.,

Defendants.

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APPEARANCES:

For Plaintiff:

Thomas A. McFarland, Esq.  
United States Attorney's Office  
Eastern District of New York  
610 Federal Plaza  
Central Islip, New York 11722

For Defendants:

Commissioner of  
Social Services of  
Suffolk County,  
Director of Child  
Support Enforcement  
Bureau

Marisa D. Pollina, Esq.  
Suffolk County Attorney  
H. Lee Dennison Building  
100 Veterans Memorial Highway  
Hauppauge, New York 11788

Commissioner of

Rose F. Lowe, Esq.



On April 18, 2007, the Court referred this motion to compel substitution to the Magistrate to report and recommend on whether Plaintiff was entitled to the relief it requested. Further, the Court recommended that the Magistrate should, if necessary, amend the January R&R. Plaintiff was given ten days to object to both R&Rs after the Magistrate filed his report and recommendation on the motion to compel.

On August 24, 2007, the Magistrate entered his Report and Recommendation on the motion to compel ("August R&R"). In the August R&R, the Magistrate recommended the following: (1) that Plaintiff's motion to compel be granted, (2) that Jack Arena - as representative of the deceased Defendant Giacomo Arena - be substituted for Defendant Giacomo Arena, and (3) that Jack Arena's substitution extend only to his representative capacity as administrator of the estate and not in his individual capacity.

The Magistrate modified the January R&R as follows: (1) that no default judgment be entered against Margaret Arena, Giacomo Arena, and Jack Arena, and (2) that the names of Margaret Arena, Giacomo Arena, Jack Arena, and John Does #1 and #2 be stricken from the docket. The January R&R remains unchanged in all other respects and specifically as to the following: (1) that a Master be appointed in the event that a default judgment is entered against Jack Arena, (2) that the Plaintiff's proposed Judgment of Foreclosure and Sale be approved with appropriate changes to

reflect Giacomo Arena's death, and (3) that the award of monies be limited to \$36,985.48 plus \$570 in costs and \$750 in Master's fees.

Plaintiff was given ten (10) days to file objections to the August R&R. On September 7, 2007 - the last day Plaintiff had to file an objection - Plaintiff requested an extension of time until September 21, 2007, to object to the August R&R. This request was not addressed by the Court, and Plaintiff did not file its objections. On Friday, September 21, 2007, Plaintiff asked for a second extension of time to object to the August R&R, which this Court denied on September 24, 2007.

The Court notes that Plaintiff asked for these two extensions of time to object on the very last day Plaintiff had to file its objections. To further exemplify Plaintiff's procrastination, Plaintiff initiated this lawsuit in 2002 - 25 years after the claims arose. (August R&R at 8, n. 1.) The Magistrate commented on whether it would be equitable to even serve a summons and complaint upon Jack Arena - five years after the lawsuit was initiated and twenty-five years after the claim arose. Plaintiff had allowed too much time to pass without actively pursuing its claims. (Id.) Based on the above, the Court rejected Plaintiff's second request for an extension of time to file objections and deemed the R&R's as unopposed. However, the Court notes that even if this Court granted Plaintiff's second request for a five-day extension of time, Plaintiff's objections would have

to have been filed by Friday, September 28, 2007.

As of the date of this Order - September 30, 2007 - the Court has not received any objections to the R&R's. Accordingly, the Court ADOPTS both R&R's. The Court GRANTS Plaintiff's motion to compel substitution, Jack Arena is now substituted for Defendant Giacomo Arena, but such substitution is limited to his representative capacity as administrator of the estate and not in his individual capacity. Further, no default judgment will be entered against Margaret Arena, Giacomo Arena, and Jack Arena, and the names of Margaret Arena, Giacomo Arena, Jack Arena, and John Does #1 and #2 will be stricken from the docket. And lastly, a Master shall be appointed in the event that a default judgment is entered against Jack Arena. Plaintiff's proposed Judgment of Foreclosure and Sale is approved with appropriate changes to reflect Giacomo Arena's death, and the award of monies is limited to \$36,985.48 plus \$570 in costs and \$750 in Master's fees.

#### **CONCLUSION**

Upon review of the R&R's to which no party has objected, the Court ADOPTS the August R&R in its entirety and the January R&R to the extent that it was not modified by the August R&R.

SO ORDERED.

/s/ JOANNA SEYBERT  
Joanna Seybert, U.S.D.J.

Dated: September 30, 2007  
Central Islip, New York